

Internal Revenue Service

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Third Party Communication: None

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CC:TEGE:EB:QP2

PLR-110134-06

Date:

August 11, 2006

Legend

State S =

Office =

State Plan =

Dear :

This responds to your authorized representative's letter of January 31, 2006, and subsequent correspondence, on behalf of State S and its Office, requesting a ruling concerning the restated deferred compensation plan (the "State Plan") and two associated amendments which S intends together to be an updated eligible deferred compensation plan for State S under section 457(b) of the Internal Revenue Code of 1986 (the "Code"), as amended under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA).

The State Plan is being amended again to include a number of revisions taking into account recent statutory changes under section 457 and the revised Income Tax Regulations under section 457 promulgated by the Treasury Department on July 10, 2003 as well as the model section 457(b) plan provisions set forth in Revenue Procedure 2004-56, 2004-2 C.B. 376.

Under the State Plan a participant may elect to defer compensation that would have been received for services rendered to State S in any taxable year until death, severance from employment (including retirement), attainment of age 70½, or until the occurrence of an unforeseeable emergency. In certain

cases set forth in the Plan, State S may also make contributions to a participant's account pursuant to the Plan.

The participant's election under the State Plan to defer compensation not yet paid must be filed prior to the beginning of the month in which his/her salary reduction agreement becomes effective. The State Plan provides for a maximum amount that may be deferred by either or both of the State and a participant in any taxable year and also provides for a catch-up computation for amounts deferred for one or more of the participant's last three taxable years ending before he or she attains normal retirement age under the Plan.

In addition, the State Plan also provides for the age 50 plus catch-up contributions described in section 414(v). However, the State Plan provides that a participant can only utilize one of the two catch-up contribution provisions during a single year. The amounts that may be deferred under the annual maximum limitation and the catch-up provisions are within the limitations of section 457 including the section 457(c) coordinated deferral provision.

With certain limitations, a participant, beneficiary or alternate payee may elect the manner in which his/her deferred amounts will be distributed. The State Plan provides that the manner and time of benefit payout must meet the distribution requirements of section 401(a)(9) of the Code. In addition the State Plan also includes a provision authorizing the State to fully terminate the Plan.

The State Plan provides that amounts of compensation deferred thereunder are to be transferred to and held in a trust described in section 457(g)(1) for the exclusive benefit of the participants and their beneficiaries. All amounts deferred under the State Plan must be transferred to the trust within an administratively reasonable time period. The trust under the State Plan was established pursuant to the Plan which provides that the trust shall be operated in accordance with section 457(g) of the Code. The trust's provisions also provide that amounts invested therein shall be held for the exclusive benefit of the State Plan's participants and their beneficiaries. The rights of any participant or beneficiary to payments pursuant to the State Plan are generally nonassignable and not subject to pledge, transfer or encumbrance.

Section 457 of the Code provides rules for the deferral of compensation by an individual participating in an eligible deferred compensation plan as defined in section 457(b).

Section 457(a)(1)(A) of the Code provides that in the case of a participant in an eligible governmental deferred compensation plan, any amount of compensation deferred under the plan and any income attributable to the amounts so deferred shall be includible in gross income only for the taxable

year in which such compensation or other income is paid to the participant or beneficiary.

Section 457(b)(5) prescribes that an eligible deferred compensation plan must meet the distribution requirements of section 457(d).

Section 457(d)(1)(A) provides that for a section 457 plan to be an eligible plan, the plan must have distribution requirements providing that under the plan amounts will not be made available to participants or beneficiaries earlier than i) the calendar year in which the participant attains age 70½, ii) when the participant has a severance from employment with the employer, or iii) when the participant is faced with an unforeseeable emergency as determined under Treasury regulations.

Section 457(d)(2) requires a plan to meet the minimum distribution requirements of section 401(a)(9) as described in §§ 1.409(a)(9)-1 thru 1.401(a)(9)-9.

Section 457(e)(1)(A) defines an eligible employer to be a state, political subdivision of a state, and any agency or instrumentality of a state or political subdivision of a state.

Section 457(g) provides that a plan maintained by an eligible governmental employer shall not be treated as an eligible deferred compensation plan unless all assets and rights purchased with such deferred compensation amounts and all income attributable to such amounts, property, or rights of the plan are held in trust for the exclusive benefit of participants and their beneficiaries. Section 457(g)(2)(A) provides that a trust described in section 457(g)(1) shall be treated as an organization exempt from tax under section 501(a).

Based upon the information submitted and the representations made, we conclude as follows:

1. The restated State Plan, with the submitted proposed amendments incorporated therein, constitutes an eligible deferred compensation plan as defined in section 457(b) of the Internal Revenue Code of 1986 as amended under EGTRRA.
2. Amounts of compensation deferred in accordance with the State Plan, including any income attributable to the deferred compensation, will be includible under section 457(a)(1)(A) in the recipient's gross income only for the taxable year or years in which amounts are paid to a participant or beneficiary in accordance with the terms of the Plan.

3. Assuming that it is a valid trust under State S law, the trust associated with the State Plan is treated under section 457(g) as a trust that is treated as an organization exempt from taxation under section 501(a).

No opinion is expressed concerning the timing of the inclusion in income of amounts deferred under any deferred compensation plan other than the above-described State Plan. This ruling is directed only to the State Plan and applies only if the restated State Plan and associated amendment submitted on January 31, 2006, is revised in accordance with the amendments submitted on June 13, 2006. If the restated State Plan, as revised by the June 13, 2006 amendments, is significantly modified, this ruling will not necessarily remain applicable. Section 6110(k)(3) of the Internal Revenue Code provides that this ruling may not be used or cited as precedent.

Sincerely,

Robert D. Patchell
Chief, Qualified Plans Branch 2 (Employee
Benefits)
(Tax Exempt & Government Entities)

Enclosure (1)

cc: